FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 413 of 2007
(Smt. Mankarna Janardhan Tapre & 5 ors. Vs. Ashok Sheshrao Kalaskar)

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mr. K.S. Narwade, Adv. for the appellants.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 29th August, 2007

Heard Shri Narwade for the appellants.

The appellants are the original defendants. A suit was filed by the plaintiff for possession and permanent injunction. The plaintiff claimed to be the owner of the suit field. It was pleaded by the plaintiff that in the year 1997, the defendants forcibly took possession of the southern portion of suit filed which admeasures 1.31 hectare of Gat No. 284. The plaintiff filed the measurement map and also showed the encroached portion on the same. According to the plaintiff, the possession of the defendants was that of a trespasser and since the defendants refused to hand over the possession of the field to the plaintiff, the suit was instituted.

The defendants denied the claim of the plaintiff and pleaded that the suit claim was

false and baseless. It was pleaded by the defendants that the defendants were the owners of Gat No.286 and they were actually in possession of Gat No.286 and not Gat No. 284 as pleaded by the plaintiff.

The trial as well as the appellate Courts, however, on the appreciation of the material evidence on record, came to a conclusion that the plaintiff had proved that he was the owner of Gat No.284 and the defendants had encroached upon 1.31 hectares land which was part and parcel of Gat No. 284. The Court further held that the plaintiff was entitled to recover the possession of encroached portion.

Findings recorded by both the Courts are based on a proper appreciation of the material evidence on record. They do not give rise to any substantial question of law. The judgment reported in **A.I.R. 1996 Supreme Court 196** and relied upon by the counsel for the appellant, would not be applicable to the facts and circumstances of the case.

Second appeal is dismissed with no orders as to costs.

JUDGE

RMP